BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

VICTOR D. CLEVENGER Claimant	
VS.	Dookst No. 204 420
EXCEL TEMPORARY SERVICES	Docket No. 204,439
Respondent)	
WAUSAU UNDERWRITERS INSURANCE	
COMPANY Insurance Carrier	

ORDER

Respondent and its insurance carrier request review of the preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler which on February 15, 1996 which was mistakenly dated February 15, 1995.

<u>Issues</u>

The Administrative Law Judge ordered the respondent to provide claimant medical benefits. The respondent and its insurance carrier requested this review and contend the Kansas Workers Compensation Act is not applicable because the accident occurred outside the state of Kansas and the contract of employment was formed in the state of Missouri. This is the only issue set forth in the respondent's Notice of Appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing order of the Administrative Law Judge should be affirmed.

Claimant is a resident of Missouri. Respondent is a temporary personnel services company doing business in Overland Park, Kansas. After seeing a newspaper ad, claimant went to respondent's Overland Park office and applied for employment in May or June 1995. Two or three days later claimant telephoned respondent and was told to return to the office to take some tests and to be interviewed. After the interview, respondent told claimant to check back. When claimant called back several days later he was assigned a week-long job unloading trucks. After that job ended, claimant began working for a different temporary services agency.

Claimant contacted the respondent again by telephone in July 1995. Respondent later telephoned the claimant and sent him to work in mid-July 1995 for Wagner Enterprises in the caves of Kansas City, Missouri. On July 27, 1995 claimant was injured while working at Wagner Enterprises when a coworker attacked him with a broom handle. Immediately before the attack, the coworker had become angry when the claimant asked

him to help load a hopper with sugar. During the fight, claimant dislocated his right shoulder.

The Appeals Board finds the Kansas Workers Compensation Act is applicable. Although the record lacks detailed information concerning the conversations between claimant and respondent, based upon the evidence presented to date, the Appeals Board finds for preliminary hearing purposes that claimant telephoned the respondent in July 1995 to offer to return to work for the respondent. Thereafter, from its offices in Overland Park, Kansas, respondent accepted the offer and, therefore, acceptance is deemed to have occurred in the state of Kansas. Because acceptance of claimant's offer was the last act necessary to formulate the employment contract, the contract is considered to have been made in the state of Kansas, making the Kansas Workers Compensation Act applicable to this injury. See K.S.A. 44-506.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order of Administrative Law Judge Robert H. Foerschler entered February 15, 1996, should be, and hereby is, affirmed.

IT IS SO ORDERED.
Dated this day of April 1996.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Robert S. Halas, Independence, MO Timothy J. Piatchek, Kansas City, MO Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director